Supreme Court, U.S.
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No. _____

In The

# Supreme Court of the United States

CASH COW SERVICES OF FLORIDA, LLC, et al.,

*Petitioners,*

vs.

C. DAVID BUTLER, United States Trustee,

*Respondent.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit**

## PETITION FOR WRIT OF CERTIORARI

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16 pp

## QUESTION PRESENTED

Where 28 U.S.C. § 1930(a)(6) provides for payment of fees by a Chapter 11 debtor to the United States Trustee calculated only on the Debtor's "disbursements," and where the Debtors are in the lending business, should the Debtors be required to pay the United States Trustee fees based on its loans made by the Debtors to customers in the ordinary course of business as well as "other disbursements, payments, or capital which flowed from the bankruptcy estate."

## PARTIES TO THE PROCEEDING BELOW

The following is a list of all of the parties appearing in the proceedings before the United States Court of Appeals for the Eleventh Circuit and who are petitioners or respondents before this Court:

***Petitioners***:

CASH COW SERVICES OF FLORIDA, LLC.

CASH COW F-1, LLC

CASH COW F-2, LLC

CASH COW F-3, LLC

CASH COW F-4, LLC

CASH COW F-5, LLC

CASH COW F-6, LLC

CASH COW F-7, LLC

CASH COW F-8, LLC

CASH COW F-9, LLC

CASH COW F-10, LLC

CASH COW F-11, LLC

CASH COW F-12, LLC

CASH COW F-13, LLC

CASH COW F-14, LLC

CASH COW F-15, LLC

## PARTIES TO THE PROCEEDING BELOW – Continued

***Respondent***:

C. DAVID BUTLER, UNITED STATES TRUSTEE

## CORPORATE DISCLOSURE

Cash Cow Holdings, LLC, a Louisiana corporation owns all of the outstanding and issued shares of stock of Cash Cow Services of Florida, LLC and Cash Cow F-1 through F-15. Cash Cow Holdings, LLC, Cash Cow Services of Florida, LLC, and Cash Cow F-1 through F-15 are not publicly held corporations.

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**CITATIONS TO THE OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS AND ORDERS** – Continued

UNOFFICIAL CITATIONS:

Appeal from the U.S. District Court for the Northern District of Florida, D.C. Docket No. 00-00238-CV-4-WS. This case was not reported

## PETITION FOR WRIT OF CERTIORARI

Petitioners, Cash Cow Services of Florida, LLC and Cash Cow F-1 through F-15 (hereinafter "Cash Cow") petition this Court for a writ of certiorari to review a Judgment of the United States Court of Appeals for the Eleventh Circuit.

## OPINIONS BELOW

Judgment of the United States Court of Appeals for the Eleventh Circuit was issued on July 12, 2002. Appendix 1.

The order denying the Petition for Rehearing was entered by the United States Court of Appeals on September 18, 2002. Appendix 29.

## JURISDICTION

The Judgment of the Court of Appeals was entered on July 12, 2002. An order denying the petition for rehearing filed by Cash Cow was entered on September 18, 2002. This petition has been filed and docketed within the period established by Supreme Court Rule 13 and 28 U.S.C. § 2101(c). Jurisdiction in this Court is pursuant to 28 U.S.C. § 1254(1). Jurisdiction in the court of first instance, the United States Bankruptcy Court for the Northern District of Florida, was pursuant to 28 U.S.C. §§ 157 and 1334.

## CONSTITUTIONAL AND STATUTORY PROVISIONS

The constitutional and statutory provisions involved are as follows:

28 U.S.C. § 1930(a)(6)

The pertinent text of the foregoing statute is reproduced in the Appendix. Appendix 30.

## STATEMENT OF THE CASE

On September 13, 1999, the Cash Cow Services of Florida, LLC and Cash Cow F-1 through F-15 filed Chapter 11 bankruptcy petitions in the Eastern District of Louisiana. The cases were thereafter transferred to the Bankruptcy Court for the Northern District of Florida on or about December 6, 1999.

At the time of filing of the Chapter 11 petitions, Cash Cow F-1 through F-15 were in the consumer loan business making title loans and check cashing loans to their customers. All loan transactions were made in the ordinary course of the Debtors' businesses.

Section 1930(a)(6) establishes a schedule of fees to be paid by Chapter 11 debtors to the United States Trustee based on the amount of the debtor's quarterly "disbursements." The Debtors calculated the fees due to the United States Trustee, pursuant to 28 U.S.C. § 1930(a)(6), based on all of the disbursements of the business during each calendar quarter. The Debtors' calculation did not, however, include any amount attributable to the loans made by the Debtors in the ordinary course of business to their

customers, because a loan transaction is not a "disbursement" as that word is commonly defined in the English language.

On April 5, 2000, the United States Trustee filed a Motion to Compel Full Payment of Quarterly Fees pursuant to Title 28, section 1930(a)(6), United States Code contending that the amount of the loans advanced to customers by the Debtors in the ordinary course of their business were "disbursements" for the purpose of calculating the fees due to the United States Trustee. Appendix 32. The Debtors filed a response objecting to the Motion on May 8, 2000. Appendix 50. The Debtors objected on the basis that a loan transaction is not a "disbursement." Further, payment of the fees calculated on the Debtor's loans effectively causes the Debtors to pay the fees twice – once when it makes a loan and again when it pays its obligations. No business or industry other than the lending industry is likewise affected by the result of the decision that a loan constitutes a "disbursement" for purposes of calculation of the fees due to the United States Trustee. The Motion and Debtors' Response came on for hearing before the Bankruptcy Court on May 11, 2000.

The Bankruptcy Court entered its Memorandum Opinion and Order on United States Trustee's Motion to Compel Full Payment of Quarterly Fees on May 19, 2000, ruling in favor of the United States Trustee. Appendix 18.

The Debtors appealed the Bankruptcy Court decision to the United States District Court for the Northern District of Florida. The District Court entered its Opinion reversing the Bankruptcy Court January 19, 2001. Appendix 11. The District Court held that the Debtors' "loans" to

customers were not "disbursements" as that term is commonly defined in the English language.

Thereafter, the United States Trustee appealed the decision of the District Court to the Eleventh Circuit Court of Appeals. The Eleventh Circuit reversed the decision of the District Court and held that the Debtors were required to pay fees based on "the consumer loans made by Cash Cow to its customers, as well as Cash Cow's other disbursements, payments, or capital which flowed from the bankruptcy estate" and that the Debtors' loans were "disbursements" within the meaning of 28 U.S.C. § 1930(a)(6). The Debtors filed a Petition for Panel Rehearing. Appendix 57. The Petition was denied by the Eleventh Circuit. Appendix 29.

## REASONS FOR GRANTING THE WRIT

This is a case of first impression in that it involves a question of significant importance that has not been decided by this Court or any circuit court of appeals other than the Eleventh Circuit decision below. The case involves the construction of a federal statute, (28 U.S.C. § 1930(a)(6)).

Section 1930(a)(6) requires payment of fees to the United States Trustee based only on the debtor's "disbursements." The Debtors are in the lending business making consumer loans to its customers. The Eleventh Circuit held that "the plain meaning of 'disbursement' and the plain meaning of [28] (sic) U.S.C. § 1930(a)(6) as applied in this case require Cash Cow to pay the Trustee its required quarterly fees on the consumer loans made by Cash Cow to its customers, as well as Cash Cow's other

disbursements, payment, or capital which flowed from the bankruptcy estate." Appendix 4. The Eleventh Circuit also held that the Debtors' consumer loans were "disbursements" contrary to the overwhelming weight of the law that a "disbursement" is a "payment" rather than a loan.

"A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning." *Perrin v. U.S.*, 444 U.S. 37, 42, 100 S.Ct. 311, 314; 62 L.Ed. 2d 199 (1979), *citing*, *Burns v. Alcala*, 420 U.S. 575, 580-581 (1975). After referencing nine (9) leading dictionaries in its decision, the Eleventh Circuit stated that:

> The general consensus is that a "disbursement" is defined as either (a) the action or fact of disbursing, or (b) that which has been disbursed, money or funds paid out, or expenditure. To "disburse" means (a) to pay out or expend money; (b) to pay or defray costs, expenses, or charges; (c) to distribute; or (d) to pay for or on account of some thing.

Appendix 4. It is submitted the "general consensus" definition of "disbursement" is the common, ordinary meaning of the word. Nowhere in any definition does it even contemplate a loan; rather, the general consensus is that a disbursement is exactly the opposite of a loan.

In fact, every case that has considered the definition of the word disbursement in the context of section 1930(a)(6) has reached the conclusion that a "disbursement" is the payment of an expenditure. Not one single case or other source cited by the Eleventh Circuit has

defined a disbursement as "all capital flowing from the bankruptcy estate."

It appears that the Eleventh Circuit did not apply the correct rule of law as stated in *Perrin*, *supra*.; but rather it defined "disbursement" as broadly as could possibly be defined and contrary to the easily ascertained common meaning of the word as found in the various dictionaries and cases referenced in their opinion. For instance, in *St. Angelo v. Victoria Farms, Inc.*, 38 F.3d 1525 (9th Cir. 1994) (cited by the Eleventh Circuit in, *In re Jamko, Inc.*, 240 F.3d 1312 (11th Cir. 2001)), the Court found that "Congress intended 'disbursement' to include all payments from the bankruptcy estate. . . . The definition of 'disburse' is 'to expend . . . pay out.'" *St. Angelo*, at 1534. The definition in *St. Angelo* is the consensus definition of "disbursement." In view of the fact that the Eleventh Circuit has applied the incorrect rule of law, it is respectfully requested that the Court grant the writ of certiorari.

Even though the amount in controversy in this case is six figures, the Cash Cow Debtors are small lenders by national standards. However, the same statutory provision obviously applies to all Chapter 11 debtors, and therefore, to any other lending institution that may file Chapter 11. The impact of the Eleventh Circuit's decision on any lender is severe, but the impact on any large lender could be devastating. Debtors in the lending industry should not be treated to any different definition of the term "disbursement" than any other debtor, but that is the effect of this case. While other debtors pay a fee based on their payments of expenditures and obligations, Cash Cow, and all future lenders, are required to pay a fee based on their payments of expenditures and obligations, *as well as its loans and all capital flowing from the bankruptcy estate.*

That kind of disparate treatment is not intended by section 1930(a)(6), nor should it be allowed to persist in this case or future Chapter 11 cases.

## CONCLUSION

We submit that the Eleventh Circuit did not apply this Court's rule of law as stated in *Perrin*, and, in light of the fact that this is a case of first impression construing a federal statute, we respectfully request that this Petition for Writ of Certiorari be granted.

Respectfully submitted,

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No. _____

In The
# Supreme Court of the United States

CASH COW SERVICES OF FLORIDA, LLC, et al.,

*Petitioners,*

vs.

C. DAVID BUTLER, United States Trustee,

*Respondent.*

**On Petition For Writ Of Certiorari**
**To The United States Court Of Appeals**
**For The Eleventh Circuit**

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[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 01-11805

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D.C. Docket No. 00-00238-CV-4-WS
Bkcy. No. 99-79997-TLH4

In RE: CASH COW SERVICES
OF FLORIDA LLC,

Debtor.,

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CASH COW SERVICES OF
FLORIDA LLC,

Plaintiff-Appellee,

versus

UNITED STATES TRUSTEE,

Defendant-Appellant.

---

Appeal from the United States District Court
for the Northern District of Florida

---

(Filed July 12, 2002)

Before TJOFLAT, RONEY and COX, Circuit Judges.

PER CURIAM:

In this bankruptcy case, the United States Trustee ("the Trustee") filed a motion to compel additional payment on the quarterly fees for the third and fourth quarters of 1999 by Cash Cow Services of Florida, LLC ("Cash Cow"), a Chapter 11 debtor. The Bankruptcy Court for the Northern District of Florida held that Cash Cow's consumer

loans were "disbursements" for the purposes of 28 U.S.C. § 1930(a)(6) and thus subject to the Trustee's fees. *In re Cash Cow Servs. of Fla.*, 249 B.R. 33 (Bankr. N.D. Fla. 2000). The district court reversed. The Trustee appeals. We reverse and hold that the consumer loans made by Cash Cow were disbursements within the meaning of the statute and thus subject to the Trustee's fees.

Briefly, Cash Cow is a Florida company which operated a chain of stores that provided two types of consumer loans. The first type were "title loans," which are defined as a "loan of money secured by bailment of a certificate of title to a motor vehicle." FLA. STAT. § 538.03(1)(i) (1999). Such loans are not subject to Florida's usury law and its eighteen percent per year interest ceiling. FLA. STAT. § 687.03 (1999). Cash Cow could charge up to twenty-two percent per month. FLA. STAT. § 538.06(5)(e) (1999).

The second type of consumer loans were "check cashing" loans. In these transactions, the customer would give Cash Cow a check, receive a lesser amount of cash, and Cash Cow would agree to hold the check for two weeks ("delayed presentment") when either (a) the customer paid Cash Cow the full amount of the check or (b) Cash Cow cashed the check.

This is a preconfirmation case, no Chapter 11 plan having been confirmed at the time of the decision. 28 U.S.C. § 1930 (1996) provides that parties commencing a case under Chapter 11 are subject to graduated fees for each quarter, based upon the "disbursements" for each quarter, until the case is converted or dismissed. Cash Cow's operating reports for the third and fourth quarters of 1999 calculated fees of $4,250 (based on disbursements of $152,458) and $8,000 (based on disbursements of

$732,502) respectively, but did not include the amounts attributed to the title or check cashing loans. Calculations which included the loans made to customers showed an additional $8,500 (based on recalculated disbursements of $1,820,908) for the third quarter and an additional $48,750 (based on recalculated disbursements of $10,391,325), for a total amount in dispute of $57,250. Of course, the principle of law to be established by this case has ramifications beyond the amounts involved here.

The question is whether the consumer loans made by Cash Cow to its customers were "disbursements" under 28 U.S.C. § 1930(a)(6).

The bankruptcy court, after thoroughly analyzing the current caselaw, held that these consumer loans were "disbursements" subject to the Trustee's fees for the following reasons: (1) funds flow from the preconfirmation estate to a customer-bailor, in exchange for an income earning opportunity flowing to the Debtor as bailee; (2) Cash Cow cited no legal precedent that would serve to limit the application of the fee calculation to capital flowing from the preconfirmation bankruptcy estate; and (3) Congress meant "disbursements" to include any and all funds paid out by the debtor (citing *In re Pettibone Corp.*, 244 B.R. 906, 919 (Bankr. N.D. Ill. 2000) (internal citations omitted)).

The district court reversed, holding that (1) a "loan" is not a "disbursement" as ordinarily defined; and (2) Congress did not intend the Trustee's fees to be based, in part, on the gross volume of Cash Cow's business just because Cash Cow was in the business of lending money.

We reverse the district court. Given the way that the word "disbursement" has been used in the caselaw, and

that the caselaw in a variety of jurisdictions interprets "disbursement" broadly in various contexts, we follow our precedent in *In re Jamko,* 240 F.3d 1312 (11th Cir. 2001) and hold that the plain meaning of "disbursement" and the plain meaning of 18 U.S.C. § 1930(a)(6) as applied in this case require Cash Cow to pay the Trustee its required quarterly fees on the consumer loans made by Cash Cow to its customers, as well as Cash Cow's other disbursements, payments, or capital which flowed from the bankruptcy estate.

This Court has examined nine dictionaries and their definitions of "disburse" and "disbursement." OXFORD ENGLISH DICTIONARY (2d ed. 1991); MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (10th ed. 1993); NEW SHORTER OXFORD ENGLISH DICTIONARY ON HISTORICAL PRINCIPLES (1993); RANDOM HOUSE UNABRIDGED DICTIONARY (2d ed. 1993); WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE, UNABRIDGED (1993); WEBSTER'S NEW WORLD COLLEGE DICTIONARY (3d. ed. 1997); RANDOM HOUSE WEBSTER'S COLLEGE DICTIONARY (1997); OXFORD AMERICAN DICTIONARY AND LANGUAGE GUIDE (1999); BLACK'S LAW DICTIONARY (7th ed. 1999).

The general consensus is that a "disbursement" is defined as either (a) the action or fact of disbursing, or (b) that which has been disbursed, money or funds paid out, or expenditure. To "disburse" means (a) to pay out or expend money; (b) to pay or defray costs, expenses, or charges; (c) to distribute; or (d) to pay for or on account of some thing.

These definitions do not restrict the meaning to a payment or an expenditure. Contrary to the argument that a "loan does not fall within the common and ordinary

meaning of the term 'disbursement,'" Webster's Third New International Dictionary of the English Language, Unabridged uses this as an example of the use of the word: "disbursement of the loan has been completed."

Contrary to the argument that Congress could not have intended the word to include loans, the Trustee cited the following statutes in which "loan" and "disbursement" clearly go together: 2 U.S.C. § 661a(5)(B)(1) (referring specifically to "loan disbursements"); 12 U.S.C. § 1715z-1(s)(5)(A) (using the phrase "in a single loan disbursement"); 20 U.S.C. § 1072b(d)(1) (stating that "[f]unds in the Operating Fund shall be used for application processing, loan disbursement . . ."); 42 U.S.C. § 300e-(b)(1)(B)(2) (stating that "[o]n the date disbursements are made under a loan after the initial disbursement under the loan, the Secretary may change the rate of interest on the amount of the loan disbursed . . ."); 45 U.S.C. § 821(1)(B)(1) (referring specifically to "loan disbursements").

The Trustee also cites the following cases where courts have referred to "loan disbursements" or disbursement of loans: *Bank Brussels Lambert v. Fiddler Gonzalez & Rodriguez,* 171 F.3d 779, 782 (2d Cir. 1999) (using the specific term "loan disbursements"); *United States v. Symington,* 195 F.3d 1080, 1089 (9th Cir. 1999) (stating that "[c]ounts 13 to 15 alleged that Symington . . . [submitted] materially false requests for disbursements on loans"); *United States v. Parsons,* 141 F.3d 386, 388 (1st Cir. 1998) (stating that "the bank agreed to make a full-scale loan . . . . [s]ome of this money was disbursed at once"); *United States v. Koster,* 163 F.3d 1008 (7th Cir. 1998) (referring, *passim,* to "Farm Stored Loan disbursements"); *United States v. Sullivan,* 112 F.3d 180, 181 (5th Cir. 1997) (stating that "[t]his case centers on the circumstances surrounding

the disbursement of four loans by defendants . . ."); *Chase Manhattan Bank, N.A. v. Am. Nat'l Bank & Trust Co. of Chi.,* 93 F.3d 1064, 1068 (stating that "Chase expressly waived the provisions that tied the loan disbursements to the incurring of costs."); *Matter of McFarland,* 84 F.3d 943, 944 (7th Cir. 1996) (stating that "[t]he loan secured by the May 1993 note comprised a disbursement of $3500 . . ."); *United States v. Grissom,* 44 F.3d 1507, 1509 (10th Cir. 1995) (stating that "[t]he statements the government contended were false were loan disbursement requests Defendant submitted . . .)"

The Trustee argues that any flow of money from the bankruptcy estate is a "disbursement," triggering a quarterly fee based on the dollar amount of the disbursement, while Cash Cow argues that the monies given to its customers are not "disbursements" because they are not payments for an expense, but rather a retail exchange of its product (cash) for a customer's payment (title or check).

This is a case of first impression because it involves what appears, *prima facie,* to be loans and disbursements. There is somewhat limited caselaw on the word "disbursement" with respect to 28 U.S.C. § 1930(a)(6). *See, e.g., In re Jamko, Inc.,* 240 F.3d 1312 (11th Cir. 2001) (holding that the Trustee fee includes all disbursements, including those made in the ordinary course of business and not limited to payments made to creditors or those made pursuant to a debtor's confirmed plan); *In re N. Hess' Sons, Inc.,* 218 B.R. 354 (Bankr. D. Md. 1998) (holding that "disbursements" include all post-confirmation expenditures by debtor until the case is dismissed, converted, or closed, including monies disbursed in the ordinary course of the Debtor's business); *In re Postconfirmation Fees,* 224 B.R. 793 (Bankr. E.D. Wash. 1998) (holding that disbursement

means all funds paid out, citing *St. Angelo v. Victoria Farms,* 38 F.3d 1525 (9th Cir. 1994), and that funds paid out include all operating expenses and post-confirmation expenditures of the reorganized debtor); *In re Pars Leasing,* 217 B.R. 218 (Bankr. W.D. Tex. 1997) (holding that, where sole source of revenue for debtor-in-possession came from payments received under vehicle leases for truck tractors owned by debtor, "disbursements" includes not only actual cash disbursements made by debtor, but also those cash disbursements for expenses made by common carriers pursuant to lease agreements with debtor); *In re Flatbush Assoc.,* 198 B.R. 75 (Bankr. S.D.N.Y. 1996) (holding that payment of rents directly from debtor's subtenants to co-op constitute "disbursements" for the purposes of 28 U.S.C. § 1930 because the rents were property of the debtor's estate and were being used to offset an expense of the estate); *In re HSSI, Inc.,* 193 B.R. 851 (N.D. Ill. 1996) (construing disbursement to mean a transfer of money by the debtor in possession where the debtor has some interest in that money); *In re Meyer,* 187 B.R. 650 (Bankr. W.D. Mo. 1995) (holding that money paid out by an escrow agent as the proceeds in which the debtor had an interest are disbursements subject to quarterly fees); *St. Angelo v. Victoria Farms,* 38 F.3d 1525 (9th Cir. 1994) (holding that "disbursements" include all payments from the bankruptcy estate, i.e. all funds paid out, and do not exclude payments to a secured creditor from the sale proceeds of the secured party); *In re Hays Builders, Inc.,* 144 B.R. 778 (Bankr. W.D. Tenn. 1992) (holding that a disbursement is any payment, and that all disbursements, whether direct or through a third party, are included of the calculation of fees due to the U.S. Trustee under § 1930); *In re Wernerstruck, Inc.,* 130 B.R. 86 (D.S.D. 1991) (holding that debtor's payment to bank are disbursements

within the meaning of 28 U.S.C. § 1930 whether or not they are the required annual payment or prepayment on the loan, and citing *In re Ozark Beverage Co., Inc.*, saying that a disbursement is any payment); *In re Ozark Beverage Co., Inc.*, 105 B.R. 510 (Bankr. E.D. Mo. 1989) (refusing to limit "disbursements" to post-petition payments made to pre-petition debtors; disbursements encompass all expenses paid by debtor in possession).

None of the above cases prevents or limits applying the Trustee's fee calculation to only "payments" or capital flowing from the bankruptcy estate.

Accordingly, we hold that the consumer loans made by Cash Cow were "disbursements" within the meaning of 28 U.S.C. § 1930(a)(6) and therefore subject to the Trustee's fees, and reverse the district court.

REVERSED.

**United States Court of Appeals**
For the Eleventh Circuit

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No. 01-11805

---

District Court Docket No.
00-00238-CV-4-WS

In Re:

CASH COW SERVICES OF
FLORIDA LLC,

Debtor.

---

CASH COW SERVICES OF
FLORIDA LLC,

Plaintiff-Appellee,

versus

UNITED STATES TRUSTEE,

Defendant-Appellant.

---

Appeal from the United States District Court
for the Northern District of Florida

---

(Filed Jul. 12, 2002)

JUDGMENT

It is hereby ordered, adjudged, and decreed that the attached opinion included herein by reference, is entered as the Judgment of this Court.

Entered: July 12, 2002
For the Court: Thomas K. Kahn, Clerk
By: Gilman, Nancy

ISSUED AS MANDATE
SEP 26 2002
U.S. COURT OF APPEALS
ATLANTA, GA.

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

IN RE:

CASH COW SERVICES
OF FLORIDA, L.L.C.,
CASH COW F-1, L.L.C.,
CASH COW F-2, L.L.C.,
CASH COW F-3, L.L.C.,
CASH COW F-4, L.L.C.,
CASH COW F-5, L.L.C.,
CASH COW F-6, L.L.C.,
CASH COW F-7, L.L.C.,
CASH COW F-8, L.L.C.,
CASH COW F-9, L.L.C.,
CASH COW F-10, L.L.C.,
CASH COW F-11, L.L.C.,
CASH COW F-12, L.L.C.,
CASH COW F-13, L.L.C.,
CASH COW F-14, L.L.C.,
CASH COW F-15, L.L.C.,

Debtors.

CHAPTER 11

BKTCY NO. 99-79997-TLH4
99-79996-TLH4
99-79995-TLH4
99-79994-TLH4
99-79993-TLH4
99-79992-TLH4
99-79991-TLH4
99-79990-TLH4
99-79989-TLH4
99-79988-TLH4
99-79987-TLH4
99-79986-TLH4
99-79985-TLH4
99-79984-TLH4
99-79983-TLH4
99-79982-TLH4

Jointly administered under
BKTCY. NO. 99-79997-TLH

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CASH COW SERVICES
OF FLORIDA, L.L.C., et al.,

Appellants/Debtors,

v.

UNITED STATES TRUSTEE,

Appellee.

4:00cv238-WS

(Filed Jan. 19, 2001)

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## OPINION

This case is before the court upon appeal from a final order entered by the United States Bankruptcy Court for the Northern District of Florida. For the reasons discussed below, this court reverses that order.

### I.

Cash Cow Services of Florida, L.L.C., a managerial entity, and fifteen separate operational entities, Cash Cow F-1 through Cash Cow F-15 (collectively, "Debtors"), are engaged in the consumer title loan business. On September 13, 1999, Debtors filed sixteen voluntary chapter 11 bankruptcy petitions in the Eastern District of Louisiana. The cases were transferred to the Northern District of Florida on December 6, 1999, and were thereafter administratively consolidated.

On February 29, 2000, the Trustee advised Debtors that they had collectively underpaid quarterly fees for the third quarter of 1999 in the amount of $8,500 and for the fourth quarter of 1999 in the amount of $48,750. Contrary to the position taken by Debtors, the Trustee maintained that customer loans should be treated as "disbursements" upon which quarterly fees are calculated.

The Trustee filed a motion to compel full payment of quarterly fees on April 5, 2000. On May 19, 2000, the bankruptcy court entered an order granting the Trustee's motion. At the time the bankruptcy court entered its order, no chapter 11 plan had been confirmed. This appeal was filed on May 30, 2000.

II.

The single issue raised in this appeal turns on the statutory construction of 28 U.S.C. § 1930(a)(6), which requires debtors in bankruptcy to pay prescribed fees to the United States Trustee. For a chapter 11 debtor, quarterly fees are assessed based upon the amount of the debtor's "disbursements." Unfortunately, the term "disbursements" is not defined in section 1930(a)(6), nor is it defined in the Bankruptcy Code. Congress, moreover, has offered no guidance as to the meaning of the term "disbursements."

A basic rule of statutory construction is that "words will be interpreted as taking their ordinary, contemporary, common meaning." *Perrin v. United States*, 444 U.S. 37, 42, 100 S. Ct. 311, 62 L.Ed.2d 199 (1979). The term "disbursement" has been defined as "the act of paying out money, commonly from a fund or in settlement of a debt or account payable." Black's Law Dictionary (17th ed. 1999). Consistent with Black's definition, courts have consistently construed the term to mean any "payment" of an "expenditure" of the debtor.

The court in *Celebrity Home Entertainment, Inc. v. Celebrity Duplicating Servs. (In re Celebrity Home Entertainment, Inc.)*, 210 F.3d 995, 998 (9th Cir. 2000), said: " 'Disbursements' is an 'expansive' term that captures 'all payments,' whether to secured or unsecured creditors." In *In re Ozark Beverage Co., Inc.*, 105 B.R. 510, 512 (Bankr. E.D. Mo. 1989), the court defined "disbursements" as "all expenses of a debtor-in-possession in a given quarter," including "any payment to a pre-petition secured creditor." The court in *In re Wernerstruck, Inc.*, 130 B.R. 86, 89 (Bankr. D.S.D. 1991), said that "a disbursement is any

payment." The meaning of the term "payment" was explored in *In re Pars Leasing, Inc.*, 217 B.R. 218 (Bankr. W.D. Tex. 1997) (deciding that the term "disbursements" encompasses both payments by the debtor as well as payments by third parties on behalf of the debtor), as follows:

> Payment is defined as, "a discharge of an obligation or debt. . . . In a more restricted legal sense, payment is the performance of a duty, promise or obligation, or discharge of a debt or liability, by the delivery of money or other value by a debtor to a creditor where the money or other valuable thing is tendered and accepted as extinguishing debt or obligation in whole or in part. . . . Payment is a delivery of money or its equivalent in either specific property or services by one person from whom it is due to another person to whom it is due."

*In re Pars Leasing, Inc.*, 217 B.R. at 219 (quoting Black's Law Dictionary (5th ed. 1979)). Numerous other courts have similarly construed the term "disbursement" to mean a "payment" or "expenditure" of the debtor. *See, e.g., St. Angelo v. Victoria Farms, Inc.*, 38 F.3d 1525 (9th Cir. 1994) (concluding that Congress not only intended the term "disbursements" to include "all payments from the bankruptcy estate" but also intended to adopt an expansive definition of the term "payments" that includes both secured and non-secured debts); *United States Trustee v. Pettibone Corp.*, 251 B.R. 335 (N. D. Ill. 2000) (concluding that the term "disbursements" includes both pre-confirmation and post-confirmation payments to creditors as well as payments of ordinary business expenses); *In re Postconfirmation Fees*, 224 B.R. 793, 799 (Bankr. E.D. Wash. 1998) (stating

that, in a post-confirmation context, the term "disbursements" means primarily the operating expenses of a debtor). Apparently no court has considered, much less decided, whether the term "disbursements" encompasses monies that a debtor lends in the ordinary course of business to its borrower-customers.

This court finds that none of the cases cited by the Trustee or by the bankruptcy court supports the conclusion that a "loan" constitutes a "disbursement." A "loan" is defined as "a grant of something for temporary use." Black's Law Dictionary (17th ed. 1997). To "lend" means "to provide (money) temporarily on condition of repayment, usu[ally] with interest." *Id.* A "loan" is not a "payment" or an "expenditure." Quite simply, a "loan" does not fall within the common and ordinary meaning of the term "disbursement."

While the legislative history of section 1630(a)(6) is silent as to the meaning of "disbursement," the history nonetheless suggests that Congress did not intend the fee provision to be "a general fund raising method for the government." H.R. Rep. No. 99-764, at 22 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5227, 5234-5235. Congress said that it intended for "the monies generated from fees . . . [to] be at least equal to the money needed to fund the U.S. Trustee Program each year, so that the Program will be self-funded by the users of the bankruptcy system – at no cost to the taxpayer." *Id.* At the same time, Congress emphasized that it intended for "the money generated by self-funding [to] approximate the amount needed to fund the Program." *Id.*

Consistent with the statute's legislative history, courts have generally agreed that the quarterly fee required by

section 1930 represents a user's fee and not a tax. *See, e.g., In re Gates Community Chapel of Rochester, Inc.*, 212 B.R. 220 (Bankr. W.D.N.Y. 1997) (finding that quarterly U.S. Trustee fees are a form of user's fee and not a tax). A user's fee, unlike a tax, is incident to a voluntary act and connotes a benefit not shared by other members of society. *Nat'l Cable Television Ass'n v. United States*, 415 U.S. 336, 340-341, 94 S. Ct. 1146, 39 L.Ed.2d 370 (1974); *In re Jenny Lynn Mining Co.*, 780 F.2d 585, 589 (6th Cir. 1986) (explaining that, "[w]here a governmental unit imposes a charge in return for bestowing an individual benefit on one who requests permission to engage in a regulated activity, the charge is a fee rather than a tax"). User fees are not intended to be true revenue-generating measures but, instead, are "assessed to reimburse the [government] for costs incurred in providing specific qualifiable services." *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 622 n.12, 101 S. Ct. 2946, 69 L.Ed.2d 884 (1981). Indeed, the Supreme Court has said that "'the fees charged [should] not appear to be manifestly disproportionate to the services rendered.'" *Commonwealth Edison Co.*, 453 U.S. at 622 n.12 (quoting *Clark v. Paul Gray, Inc.*, 306 U.S. 583, 599, 59 S. Ct. 744, 83 L.Ed.2d at 1001 (1939)).

The Trustee has not suggested, nor does 28 U.S.C. § 586(a) (setting forth the duties of United States Trustees) provide, that a United States Trustee has any role in overseeing a debtor-in-possession's day-to-day business transactions with its customers. If there is little or no oversight responsibility over a debtor's daily business operations, an assessment of fees based on those operations would no doubt be "manifestly disproportionate" to the services rendered.

Furthermore, in this case, the effect of the bankruptcy court's order is to allow the Trustee's fee to be based, in part, on the gross volume of Debtors' business simply because Debtors happen to be in the business of lending money. Indeed, because Debtors' average loan period is fifteen to thirty days, the effect of the bankruptcy court's order is to allow the Trustee's fee to be assessed against the same funds several times per quarter. In other words, it appears that the bankruptcy court would have these Debtors, unlike those engaged in the business of selling goods or services, pay fees totally out of proportion to the "costs incurred in providing specific quantifiable services." Such was not the intent of Congress.

III.

Because this court finds that a "loan" is not a "disbursement" as that term is ordinarily defined, and because Congress evidenced no intent to impose a fee on the gross volume of a debtor's business, the order of the bankruptcy court, entered on the docket May 19, 2000, is REVERSED.

ENTERED this 20th day of January, 2001.

/s/ William Stafford
WILLIAM STAFFORD
SENIOR UNITED STATES
DISTRICT JUDGE

**UNITED STATES BANKRUPTCY COURT**
**NORTHERN DISTRICT OF FLORIDA**
**TALLAHASSEE DIVISION**

IN RE:

| | | |
|---|---|---|
| CASH COW SERVICES OF FLORIDA, L.L.C., CASH COW F-1, L.L.C., CASH COW F-15, L.L.C. | * * * * * * * | Chapter 11 Case No.: 99-79997-TLH4 |
| Debtor | | |

(Filed May 19, 2000)

**MEMORANDUM OPINION AND ORDER ON UNITED STATES TRUSTEE'S MOTION TO COMPEL FULL PAYMENT OF QUARTERLY FEES**

THIS MATTER is before the Court upon the Motion of the United States Trustee to compel full payment of the quarterly fees owed by the Debtor pursuant to 28 U.S.C. § 586[1] and 28 U.S.C. § 1930(a)(6).[2] This Court has

[1] 28 U.S.C. § 586. Duties; supervision by Attorney General. (a) Each United States trustee, within the region for which such United States trustee is appointed, shall – . . . (3) supervise the administration of cases and trustees in cases under chapter 7, 11, 12 or 13 of title 11 by, whenever the United States trustee considers it to be appropriate – . . . (D) taking such action as the United States trustee deems to be appropriate to ensure that all reports, schedules, and fees required to be filed under title 11 and this title by the debtor are properly and timely filed. . . .

[2] 28 U.S.C. § 1930 (1996). Bankruptcy fees: (a) Notwithstanding § 1915 of this title, the parties commencing a case under title 11 shall pay to the clerk of the court the following filing fees: (6) In addition to the filing fee paid to the clerk, a quarterly fee shall be paid to the United States trustee, for deposit in the Treasury, in each case under chapter 11 of title 11 for each quarter (including any fraction thereof)

(Continued on following page)

jurisdiction pursuant to 28 U.S.C. §§ 151, 157(b)(2)(B), and 1334. At issue is whether the flow of cash in the form of title loans from the Debtor to its various customers constitutes "disbursements" subject to fees payable to the United States Trustee. For the reasons more fully outlined below, the Motion of the United States Trustee is GRANTED. The fees owed by the Debtor for the third and fourth quarters of 1999 are to be calculated based upon the methodology propounded by the UST.

## Factual Summary

Debtor operates a chain of stores that provide title loans to its customer base. Debtor has discontinued its check cashing business. The title loan business is described by our sister court in *In re Burnsed,* 224 B.R. 496,

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*until the case is converted or dismissed, whichever occurs first* (emphasis added). The fee shall be $250 for each quarter in which disbursements total less than $15,000; $500 for each quarter in which disbursements total $15,000 or more but less than $75,000; $750 for each quarter in which disbursements total $75,000 or more but less that $150,000; $1,250 for each quarter in which disbursements total $150,000 or more but less than $225,000; $1,500 for each quarter in which disbursements total $225,000 or more but less than $300,000; $3,750 for each quarter in which disbursements total $300,000 or more but less that $1,000,000; $5,000 for each quarter in which disbursements total $1,000,000 or more but less than $2,000,000; $7,500 for each quarter in which disbursements total $2,000,000 or more but less that $3,000,000; $8,000 for each quarter in which disbursements total $3,000,000 or more but less than $5,000,000; $10,000 for each quarter in which disbursements total $5,000,000 or more. The fee shall be payable on the last day of the calendar month following the calendar quarter for which the fee is owed. An individual commencing a voluntary case or a joint case under title 11 may pay such fee in installments.

499-500 (Bankr.M.D.Fla., Jacksonville Div. 1998) as follows:

> Florida Statutes Chapter 538 regulates trade, commerce, investments and solicitations of secondhand dealers. . . . This section defines a "title loan" as "a loan of money secured by bailment of a certificate of title to a motor vehicle. . . . "
>
> F.S. § 538.03(1)(i).
>
> Secondhand dealers include any persons engaged in the business of entering title loan agreements. F.S. § 538.03(1)(a). Florida Statutes Chapter 538 requires that secondhand dealers entering title loan contracts maintain physical possession of the motor vehicle title and that the owner maintain possession of, or control over, the motor vehicle throughout the transaction. F.S. § 538.06(5). A secondhand dealer engaged in a motor vehicle title loan transaction may repossess the motor vehicle upon failure of the owner to redeem the title. § 538.06(5)(d) (West 1998).
>
> *In re Burnsed,* 224 B.R. at 499-500.

The title loan business is dissected further by Jarret C. Oeltjen, *Florida Pawnbroking: An Industry in Transition,* 23 Fla. St. U.L.Rev. 995, 1006 (Spring 1996). Oeltjen states:

> [I]n many respects, a title loan is virtually indistinguishable from a more traditional loan using an automobile as collateral, i.e. a "secured transaction." In the traditional setting, as in the title loan arena, the customer/borrower retains possession, and the lender notes its security interest on the title and retains possession of that title. However, these two forms of the same type of

> title transaction are also very different in cost to the borrower and degree of protection of the borrower's interest. A conventional loan using an automobile as collateral would be subject to the Florida usury law and its eighteen percent per annum interest ceiling. A title loan is subject to a . . . ceiling [of] . . . twenty-two percent *per month* [emphasis added]. . . .
>
> If the . . . [borrower] defaults on either its secured loan or its title loan, the respective lender has repossession of the collateral as an available remedy. But here the similarity ends. First, the repossession of secured loan collateral is expressly subject to the "no breach of the peace rule," which the repossession of title loan collateral is not. Second, the secured loan collateral can be sold only at a commercially reasonable sale after reasonable notice to the . . . [borrower], while the only restriction on the sale of title loan collateral is that it be sold through a licensed motor vehicle dealer, an illusory protection at best. Finally, upon sale of secured loan collateral, the . . . [borrower] is entitled to any surplus of the sales proceeds over the loan balance plus expenses of sale and repossession, but the . . . [borrower] is also liable for any deficiency. After repossession of title loan collateral, the . . . [borrower] is neither entitled to a sales surplus nor liable for a sales deficiency.
>
> 23 Fla. St. U.L.Rev. at 1005-06.

Cash Cow Services of Florida, L.L.C., a managerial entity, plus fifteen separate operational entities, labeled Cash Cow F1 through Cash Cow F15, are jointly administered under the instant case. In essence, the Debtor advances cash to its customers in exchange for possession

of automobile titles. As a bailee, the Debtor enjoys an interest rate of up to 22% *per month* as a fee earned in fulfillment of its duties as a bailee. The investment of cash by the Debtor in possession of the titles of properties owned by its customers gives Cash Cow access to an income stream that would be the envy of a traditional buyer of inventory for resale. In the event of default by its customer, the Debtor-as-bailee may then move upon the title by repossession of the collateral, thus generating additional or alternative flows of revenue. Provided that the Debtor is not loaning cash in excess of the value of the collateral secured by the title, Cash Cow has the potential of making a profit on the transaction whether or not the customer fulfills its contractual obligations

The instant case is preconfirmation; no Chapter 11 plan has been confirmed to date. The Debtor's 1999 third quarter monthly operating reports showed total disbursements of $152,458.00 and calculated fees owing to the Trustee in the amount of $4,250.00. The Debtor's calculations did not include any amounts attributed to the loans made in the ordinary course of the Debtor's business to its customers. The United States Trustee calculated the total disbursements by the Debtor, including the funds advanced as loans to its customers, in the amount of $1,820,908.00. Fees owing on these disbursements were calculated at $12,750.00 by the Trustee, suggesting an outstanding fee claim of $8,500.00.

For the fourth quarter of 1999, the Debtor showed disbursements of $732,502.00 with fees owed of $8,000.00. The Trustee's calculations for this period showed $10,391,325.00 in disbursements and $56,750 fees owed. The difference in the fee calculation for the fourth quarter

was $48,750.00. The total fees amount in dispute is $57,250.00.

## Discussion

The United States Trustee argues that any flow of money from the bankruptcy estate is a disbursement that forms the basis for the quarterly fee calculation, pursuant to 28 U.S.C. § 1930(a)(6). Debtor contends that the title loans are actually leases of the Debtor's inventory (cash) to its customers, with the Debtor holding the title as security for the payment of the lease. Debtor argues that these payments to its customers are not disbursements in the sense that they are not payments for an expense, but a retail exchange of its product (cash) for the customer's payment (the title).

The parties' characterization of the dispute is centered on the construction of the statute. The Trustee argues in favor of following the plain language of the statute, wherein any flow of funds from the bankruptcy estate would be subject to the fee calculation. The Debtor argues in favor of interpreting the statute according to the plain meaning of the word "disbursement" as it relates to payments that redeem expenses of the business, but not its loans to customers, which it considers the equivalent of its gross sales.

The United States Trustee System Fund was created by Congress to insure that the United States Trustee Program would be "self-funded by the users of the bankruptcy system – at no cost to the taxpayer." ***In re SeaEscape,*** 201 B.R. 321, 323 (Bankr.S.D.Fla. 1996) *analyzing*

H.R.Rep. 764, 99th Cong., 2d Sess. 22. Courts have generally agreed that § 1930(a)(6) represents a user's fee.[3] ***In the Matter of Danny's Markets, Inc.***, 239 B.R. 342, 346 (Bankr.E.D.Mich., S.Div. 1999). " . . . [T]he § 1930(a)(6) fees are . . . a revenue generating mechanism to fund the U.S. Trustee program." ***In re N. Hess' Sons, Inc.,*** 218 B.R. 354, 360 (Bankr.D.Md., at Baltimore, 1998). As a revenue generating mechanism, the UST fees are akin to a tax. *Id.* Tax laws are to be construed in a light most favorable to the taxing authority as a matter of public policy. *See e.g.,* ***Bob Jones Univ. v. United States,*** 461 U.S. 574, 595 (1983) (recognizing "the primary authority of the IRS and its predecessors in construing the Internal Revenue Code.").

The quarterly fee provision found at 28 U.S.C. § 1930(a)(6) establishes a sliding scale for U.S. Trustee fees based upon the total amount of quarterly disbursements made by the bankruptcy estate in Chapter 11 cases. *SeaEscape* at 323. During a Chapter 11 case, the debtor-in-possession's quarterly obligations to the UST are calculated from the operating reports which the debtor-in-possession must file. ***In re Betwell Oil and Gas Co.,*** 204 B.R. 817, 819 (Bankr.S.D.Fla. 1997).

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[3] See U.S. Trustee v. Gryphon at the Stone Mansion, 166 F.3d 552, 554 (3d Cir.1999) ("Historically, § 1930(a)(6) set forth a scheme to impose the costs of the United States Trustee Program on its users.") (citing H.R.Rep. No. 99-764, at 22 (1986), reprinted in 1986 U.S.C.C.A.N. 5227, 5234); In re Postconfirmation Fees, 224 B.R. at 795 (finding purpose was "to make the U.S. Trustee system self-funded and, to the extent possible, to have users of the bankruptcy system rather than the general public absorb the costs of the system"); *In re N. Hess' Sons, Inc.,* 218 B.R. 354, 360 (Bankr.D.Md., at Baltimore, 1998) (finding congressional intent was to generate revenue for the U.S. trustee system to finance its operations).

The term "disbursement" is not defined anywhere in 28 U.S.C. § 1930(a)(6), or its legislative history. ***St. Angelo v. Victoria Farms, Inc.***, 38 F.3d 1525, 1534 (9th Cir. 1994). The cases have ascribed a variety of meanings to the term. " 'Disbursements' means all expenses of a debtor-in-possession in a given quarter." ***In re Ozark Beverage Co., Inc.***, 105 B.R. 510 (Bankr.E.D.Mo., S.E.Div. 1989). "[T]he term includes 'all payments' made by the bankruptcy estate." ***St. Angelo v. Victoria Farms*** at 1534; ***SeaEscape*** at 323. Prior to the [1996] amendment, "disbursements" clearly included all disbursements. ***In re Jamko, Inc.***, 240 B.R. 645, 647 (Bankr.S.D.Fla., Ft. Lauderdale Div. 1999).

"[I]n 28 U.S.C. § 1930(a)(6), as amended in 1996, the term 'disbursements' . . . was meant by Congress to include any and all funds, including plan payments and operating expenses, paid out by the debtor, or the reorganized entity, for any reason, during the entire pendency of the chapter 11 case. . . . " ***In re Bushnell*** **and** ***In re Key Marketing, Inc.***, 1997 WL 701318 (Bankr.D.Vt. 1997). The *St. Angelo* decision was decided prior to the 1996 amendment, and "was undoubtedly correct in holding that all payments from the 'bankruptcy estate' were 'disbursements' under § 1930 because that case involved preconfirmation payments." ***In re Pettibone Corp.***, 244 B.R. 906, 919 (Bankr.N.D.Ill., E.Div. 2000).

In ***In re P.J. Keating Co.***, 205 B.R. 663 (Bankr.D.Mass. 1997), the court stated:

> [p]rior to being amended, section 1930(a)(6) applied only to preconfirmation debtors. . . . *Until confirmation, all payments made in the operation of a business necessarily come from the estate*

> (emphasis added). Congress has given no indication that ordinary course of business payments should not also increase the fees payable by . . . debtors. Congress intended to enhance revenues by these amendments. . . .

***In re Keating*** at 663.

In ***In re HSSI, Inc.***, 176 B.R. 809 (Bankr.N.D.Ill. 1995), the Bankruptcy Court defined "disbursement" as "a payment of a claim or an expense incurred by the debtor." 176 B.R. at 810. On appeal by the UST, the District Court rejected that narrow definition in favor of a more expansive interpretation "For the purpose of this court's review, this court construes 'disbursement' to mean – at least – a transfer of money by the debtor in possession where the debtor has some interest in that money." ***In re HSSI, Inc.***, 193 B.R. 851, 854 (N.D.Ill., E.Div. 1996).

**Analysis**

While the operation of the Debtor's business does not mirror that of a traditional retailer, there is guidance from cases that classify non-traditional transactions as expenditures subject to the UST fee.

In ***In re Meyer***, 187 B.R. 650 (Bankr.W.D.Mo. 1995), the debtor's escrow agent used the proceeds from a real estate sale to make payments to secured creditors holding liens against the property. After resolving an issue related to the valuation of the property of the estate, *Id.* at 653, the Court held that the disbursements were subject to the quarterly fees pursuant to the statute. These payments were held to be disbursements irrespective of who makes the disbursement [on behalf of the debtor], or to whom the disbursement is made. *Id.*

In ***In re HSSI, Inc.***, 193 B.R. 851 (N.D.Ill., E.Div. 1996), the Debtor and its twenty-seven wholly owned subsidiaries operated approximately 92 retail clothing stores in twenty four states. See, ***In re HSSI, Inc.***, 176 B.R. 809, 811 (Bankr.N.D.Ill., E.Div. 1995). The Debtor did not operate the stores, but acquired and consigned the inventory to the retail outlets. The sales revenue flowed from the subsidiaries into local "blocked" bank accounts, and from there into a "concentration" account controlled by the Debtor's secured financier. The Bankruptcy Court held that the transfers between bank accounts were intra-corporate and not economic activity, and denied the UST's motion that both the Debtor and its subsidiaries should pay fees based on the transfers. The District Court remanded the case back to the Bankruptcy Court for further explanation of the underlying economic arrangement. "The Bankruptcy Court's conclusion that the intent of section 1930 was to impose a fee measured by the level of 'real economic activity' finds no support in the text of the statute nor in any legislative history." 193 B.R. at 855.

In ***In re Pars Leasing***, 217 B.R. 218, 219 (Bankr.W.D.Texas, Austin Div. 1997), the debtor's sole source of revenue came from payments that it received under vehicle leases it had with various motor freight common carriers for the truck tractors that were owned by the Debtor. Generally, the carriers deducted certain expenses of operation pursuant to the terms of the leases from the payments it made to the debtor. The issue was whether the disbursements calculated for UST fee purposes should be limited to those payments actually made by the debtor, or whether the fee calculation should include the disbursements made by the carriers on behalf of the debtor pursuant to the terms of the leases. *Id.* The

Court held that the fee was to be calculated on both the actual disbursements by the debtor and those disbursements made by the common carriers on the debtor's behalf. *Id.* at 221.

In the instant matter, funds flow from the preconfirmation estate to a customer-bailor, in exchange for an income earning opportunity flowing to the Debtor-as-bailee. The Debtor argues that disbursements for the purpose of the fee calculation are limited to payments of claims or expenses incurred by the Debtor. This argument, while adopted by the Bankruptcy Court in ***In re HSSI, Inc.***, 176 B.R. at 810, was rejected by the District Court on appeal, 193 B.R. at 853. There being no legal precedent cited by the Debtor that would serve to limit the application of the fee calculation to capital flowing from the preconfirmation bankruptcy estate for this purpose, it is hereby

ORDERED AND ADJUDGED that the United States Trustee's Motion to Compel Full Payment of Quarterly Fees is GRANTED. Absent objection by the Debtor regarding the UST's calculation of the disbursements cited by the UST in support of its motion, the Debtor shall pay to the United States Trustee the sum of $57,250.00, which represents the outstanding fees for the third and fourth quarters of 1999.

DONE AND ORDERED at Tallahassee, Florida, this 19th day of May, 2000.

/s/ Lewis M. Killian, Jr.
LEWIS M. KILLIAN, JR.
U.S. Bankruptcy Judge

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE ELEVENTH CIRCUIT**

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No. 01-11805-AA

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In Re:

CASH COW SERVICES OF FLORIDA LLC,

Debtor.

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CASH COW SERVICES OF FLORIDA LLC,

Plaintiff-Appellee,

versus

UNITED STATES TRUSTEE,

Defendant-Appellant.

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On Appeal from the United States District Court
for the Northern District of Florida

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(Filed Sep. 18, 2002)

BEFORE: TJOFLAT, RONEY and COX, Circuit Judges.

PER CURIAM:

The petition(s) for rehearing filed by appellee, Cash Cow Services of Florida LLC, is DENIED.

ENTERED FOR THE COURT:

/s/ Paul N. Roney
UNITED STATES CIRCUIT JUDGE

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## STATUTE INVOLVED IN THIS CASE

28 U.S.C. Section 1930 (a)(6):

> (a) Notwithstanding section 1915 of this title, the parties commencing a case under title 11 shall pay to the clerk of the district court or the clerk of the bankruptcy court, if one has been certified pursuant to section 156(b) of this title, the following filing fees:
>
> . . .
>
> (6) In addition to the filing fee paid to the clerk, a quarterly fee shall be paid to the United States trustee for deposit in the Treasury, in each case under chapter 11 of title 11 for each quarter including any fraction thereof) until the case is converted or dismissed, whichever occurs first. The fee shall be $250 for each quarter in which disbursements total less than $15,000; $500 for each quarter in which disbursements total $15,000 or more but less than $75,000; $750 for each quarter in which disbursements total $75,000 or more but less than $150,000; $1250 for each quarter in which disbursements total $150,000 or more but less than $225,000; $1500 for each quarter in which disbursements total $225,000 or more but less than $300,000; $3,750 for each quarter in which disbursements total $300,000 or more but less than $1,000,000; $5,000 for each quarter in which disbursements total $1,000,000 or more but less than $2,000,000; $7,500 for each quarter in which disbursements total $2,000,000 or more but less than $3,000,000; $8,000 for each quarter in which disbursements total $3,000,000 or more but less than $5,000,000; $10,000 for each quarter in which disbursements total $5,000,000 or more. The fee shall

be payable on the last day of the calendar month following the calendar quarter for which the fee is owed.

**UNITED STATES BANKRUPTCY COURT**
**NORTHERN DISTRICT OF FLORIDA**
**TALLAHASSEE DIVISION**

IN RE:

| | |
|---|---|
| Cash Cow Services of Florida, L.L.C., | Case No. 99-79997-TLH4 |
| Cash Cow F-1, L.L.C., | Case No. 99-79996-TLH4 |
| Cash Cow F-2, L.L.C., | Case No. 99-79995-TLH4 |
| Cash Cow F-3, L.L.C., | Case No. 99-79994-TLH4 |
| Cash Cow F-4, L.L.C., | Case No. 99-79993-TLH4 |
| Cash Cow F-5, L.L.C., | Case No. 99-79992-TLH4 |
| Cash Cow F-6, L.L.C., | Case No. 99-79991-TLH4 |
| Cash Cow F-7, L.L.C., | Case No. 99-79990-TLH4 |
| Cash Cow F-8, L.L.C., | Case No. 99-79989-TLH4 |
| Cash Cow F-9, L.L.C., | Case No. 99-79988-TLH4 |
| Cash Cow F-10, L.L.C., | Case No. 99-79987-TLH4 |
| Cash Cow F-11, L.L.C., | Case No. 99-79986-TLH4 |
| Cash Cow F-12, L.L.C., | Case No. 99-79985-TLH4 |
| Cash Cow F-13, L.L.C., | Case No. 99-79984-TLH4 |
| Cash Cow F-14, L.L.C., | Case No. 99-79983-TLH4 |
| Cash Cow F-15, L.L.C., | Case No. 99-79982-TLH4 |
| Debtors. | Chapter 11 |
| _____/ | **Jointly Administered Under Case No. 99-79997-TLH4** |

## UNITED STATES TRUSTEE'S MOTION TO COMPEL FULL PAYMENT OF QUARTERLY FEES

**COMES NOW**, the United States Trustee for Region 21 pursuant to 28 U.S.C. §586 and 28 U.S.C. §1930(a)(6) and files his Motion to Compel Full Payment of Quarterly Fees. As grounds therefor the United States Trustee respectfully represents the following:

### RELEVANT CASE HISTORY

1. On September 13, 1999, each of the above referenced Debtors filed voluntary chapter 11 bankruptcy petitions in the Eastern District of Louisiana. Upon motion of the State of Florida, Division of Banking and Finance the cases were transferred to the Northern District of Florida on December 6, 1999.

2. The United States Trustee's Tallahassee Office conducted initial Debtor interviews and §341 meetings of creditors on January 18, 2000.

3. Cash Cow Services of Florida provides both administrative and financial support to operating Debtors Cash Cows F-1 through F-15. Cash Cows F-1 through F-15 are engaged in the business of making fifteen (15) and thirty (30) day automobile title and payday loans to customers.

4. On February 29, 2000 the United States Trustee's Office faxed correspondence to Debtors' Attorney, Louis L. Long, Jr., a copy of which is attached hereto as Exhibit 1. The letter stated that Cash Cow Services of Florida and Cash Cows F-1 through F-15 had failed to include all disbursements made during the third and fourth quarters

of 1999, and therefor, each had substantially underpaid quarterly fees payable to the United States Trustee pursuant to 28 U.S.C. §1930(a)(6).

5. Comparing the amount of quarterly fees paid by Cash Cows F-1 through F-15 for the third and fourth quarters of 1999 to their monthly operating reports required pursuant to Federal Rule of Bankruptcy Procedure 2015(a)(3) and 11 U.S.C. §704(8) for the months of September through December, 1999 indicates that the Debtors failed to include disbursements made for customer loan transactions in their calculation of quarterly fees. Calculating the amount of quarterly fees due for the third quarter of 1999 including the Debtors' loans results in collective total fees due of $12,750.00. Not including the loans in the calculation, as the Debtors did, results in collective total quarterly fees in the amount of $4,250.00. (This is the amount Cash Cow F-1 through F-15 paid for the third quarter of 1991.) For the third quarter of 1999 the difference between the amount the Debtors paid and the amount the United States Trustee contends they should have paid is $8,500.00.

6. For the fourth quarter of 1999, not including Debtors' loans in the calculation of quarterly fees results in collective fees in the amount of $8,000.00. (This is the amount Cash Cow F-1 through F-15 paid for the fourth quarter of 1999.) Including the loans results in collective total quarterly fees of $56,750.00. For the fourth quarter of 1999 the difference between the amount the Debtors paid and the amount the United State [sic] Trustee contends they should have paid is $48,750.00.

7. In addition, the United States Trustee's February 29th letter noted that the fees of all Debtors' professionals

had been, and were currently, being paid by Cash Cow Services of Mississippi, L.L.C., a nondebtor related entity, and that pursuant to the holdings in *St. Angelo v. Victoria Farms, Inc.*, 38 F. 3rd 1525 (9th Cir.1994) and *In re Hays Builders, Inc.*, 144 B. R. 778 (Bankr.W.D.Tenn. 1992) the calculation of quarterly fees should include both disbursements made directly by the Debtors and also those paid by third parties on the Debtors' behalf.

8. On March 3, 2000 the United States Trustee received correspondence from Mr. Long, a copy of which is attached hereto as Exhibit 2, indicating agreement that the payment of Debtors' attorney's fees by Cash Cow Services of Mississippi, L.L.C. should be considered as disbursements for purposes of calculating quarterly fees, but disagreeing with the United States Trustee's contention that Cash Cows F-1 through F-15's customer loans constitute disbursements for purposes of calculating quarterly fees.

## STATUTORY AUTHORITY

1. 28 U.S.C. §1930(a)(6) sets forth the requirement for the payment of quarterly fees to the United States Trustee. The statute provides as follows:

> (6) In addition to the filing fees paid to the clerk, a quarterly fee shall be paid to the United States trustee in each case under chapter 11 of title 11 for each quarter (including any fraction thereof) until the case is converted or dismissed, whichever occurs first. The fee shall be $250 for each quarter in which disbursements total less than $1,500; $500 for each quarter in which disbursements total $1,500 or more but less than $75,000; $750 for each quarter in which disbursements total $75,000 or

> more but less than $150,000; $1,250 for each quarter in which disbursements total $150,000 or more but less than $225,000; $1,500 for each quarter in which disbursements total $225,000 or more but less than $300,000; $3,750 for each quarter in which disbursements total $300,000 or more but less than $1,000,000; $5,000 for each quarter in which disbursements total $1,000,000 or more but less than $2,000,000; $7,500 for each quarter in which disbursements total $2,000,000 or more but less than $3,000,000; $8,000 for each quarter in which disbursements total $3,000,000 or more but less than $5,000,000; $10,000 for each quarter in which disbursements total $5,000,000 or more. The fee shall be payable on the last day of the calendar month following the calendar quarter for which the fee is owed.

2. Since enactment in 1986, 28 U.S.C. §1930(a)(6) has required the payment of quarterly fees to the United States Trustee. The funds are deposited into the United States Trustee System Fund which is the source of monies then appropriated by Congress to fund the United States Trustee's operations. Congress intended to ensure that the United States Trustee's Program would be paid for "by the users of the bankruptcy system – not by the taxpayer." H.R. Rep. No. 764, 99th Cong., 2d Sess 22, *reprinted in* 1986 USCCAN 5234; *In re Prines*, 867 F.2d 478, 480 (8th Cir. 1989). *See also* H. Rep. 764, 99th Cong., 2d Sess. 26 (1986).

3. On January 26, 1996 Congress amended §1930 (a)(6) to increase the fees paid to the United States Trustee. Specifically, "Congress was concerned that the decline in chapter 11 filings had reduced the amount of funding from fees even though the continuing unclosed case load still had to be managed." *In re: Postconfirmation Fees*, 224

B.R. 793, 796 (Bankr. E.D. Wash. 1998) (en banc) (*citing* H. R. Rep. No. 104-196, 104th Cong., 1st Sess 16-17 (1995)). Whereas the original statute provided for the payment of quarterly fees until a chapter 11 case was confirmed, converted or dismissed, the January 26, 1996, amendment deleted the reference to confirmation as an event that terminates the accrual of quarterly fees, so that such fees now accrue post-confirmation as well. See The Balanced Budget Down Payment Act of 1996, P.L. 104-99, § 211, 110 Stat. 36, 37-38 (1996). Further legislation was later enacted to clarify the 1996 amendment, stating that "*notwithstanding any other provision of law, the fees under 28 U.S.C. § 1930(a)(6) shall accrue* and be payable from and after January 27, 1996 *in all cases (including, without limitation, any cases pending as of that date), regardless of confirmation status of their plans.*" 28 U.S.C. § 1930(a)(6) note (1999) (emphasis added). Like the original amendment, the clarifying legislation was included in a revenue measure, the Omnibus Consolidated Appropriations Act of 1997, P. L. 104-208, Div. A, Title I § 109(d), 110 Stat. 3009 (1996).

4. Each time Congress has enacted legislation amending or clarifying §1930(a)(6) the end result has been to expand the statute's application, thereby increasing the overall amount of quarterly fees paid by chapter 11 debtors. On each such occasion Congress has emphasized its intent that the statute be the source of generating revenue to fund the United States Trustee Program.

## ARGUMENT

1. The United States Trustee recognizes, as Mr. Long points out in his response to the United States Trustee's February 29th letter, that 28 U.S.C. §1930 does not define

the term disbursement However, because §1930(a)(6) does not define the term "disbursement" it should be construed using its everyday, ordinary meaning. *Smith v. United States*, 507 U.S. 223, 228 (1993). Congress' failure to define the term does not create an ambiguity. As the Court stated in the case of *In re Pars Leasing Inc.*, 217 B.R. 218 (W.D. Tx. 1997), § 1930 is not ambiguous it simply fails to define the term disbursement and the failure to define a term common to the English language does not, in and of itself, make a statute unclear or ambiguous. The United States Supreme Court in *Perrin v. United States*, 444 U.S. 37, 42 (1979) noted that "a fundamental cannon [sic] of statutory construction is that . . . words will be interpreted as taking their ordinary, contemporary, common meaning." In addressing statutory construction the United States Supreme Court has held that:

> "As long as the statutory scheme is coherent and consistent, there is generally no need for a court to inquire beyond the plain language of the statute. . . . The plain meaning of legislation should be conclusive, except in the rare cases in which the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters." *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. S.Ct. 1026 (1989).

2. The plain language of 28 U.S.C. §1930 (a)(6) requires the payment of quarterly fees to the United States Trustee based on the amount of disbursements. The statute imposes no limitations on what constitutes a disbursement. The everyday dictionary meaning of the term is to "expend" or "pay out." *St. Angelo v. Victoria Farms, Inc.*, 38 F.3d 1525, 1534 (9th Cir. 1994). *See also In re Sedro-Woolley Lumber Co., Inc.*, 209 B.R. 987, 989 (Bankr. W.D. Wash. 1997); *Corporate Business Products,*

*Inc.*, 109 B.R. at 954-55; *In re P.J. Keating Co.*, 205 B. R. 663, 666-67 (Bankr. D. Mass. 1997)

3. Applying the ordinary meaning of the term disbursement to the present situation leads to the conclusion that the customer loan transactions of Cash Cow F-1 through F-15 involves the disbursement of funds. The United States Trustee contends that the result would be the same whether the Debtors classified their transactions as loans, charitable contributions, investments, gifts, payroll advances or any number of other possible alternatives. Each such transaction results in a disbursement for the purposes of calculating quarterly fees.

4. Congress did not intend that the calculation of quarterly fees turn on labels or how chapter 11 debtors classify transactions. The plain language of the §1930(a)(6) places no limitations on what constitutes a disbursement. Clearly, each of the customer loans made by Cash Cows F-1 through F-15 results in a disbursement for purposes of calculating the amount of quarterly fees payable to the United States Trustee. Because the Debtors failed to include customer loans when calculating quarterly fees for the third and fourth quarters of 1999 they have underpaid quarterly fees in the total amount of $57,250.00.

**WHEREFORE**, the United States Trustee requests that the Court enter an order finding that the Debtors' customer loans result in disbursements for which quarterly fees are payable to the United States Trustee, directing that full payment of quarterly fees be made within thirty (30) days, and for any such other relief the Court may deem just and proper.

**RESPECTFULLY SUBMITTED** this 5th day of April, 2000.

C. DAVID BUTLER
United States Trustee
Region 21

/s/ Jim L. Bennett
JIM L. BENNETT
Attorney-Advisor
Office of the United
States Trustee
227 N. Bronough Street,
Suite 1038
Tallahassee, Florida 32301
(850) 942-8899

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing United States Trustee's Motion to Compel Full Payment of Quarterly Fees has been furnished by United States Mail to **Louis L. Long, Jr., Esq., Attorney for the Debtors**, 322 Beard Street, Tallahassee, Florida 32303 and to **Cash Cow Services of Florida, L.L.C. and Cash Cows L.L.C. F-1 through F-15, c/o Jeffrey C. Swank**, 2011 Delta Blvd., #A, Tallahassee, Florida 32303 on this 5th day of April, 2000.

/s/ Jim L. Bennett
JIM L. BENNETT
Attorney-Advisor

**Exhibit 1**

[SEAL]

**U.S. Department of Justice**

Office of the United States Trustee

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*Suite 1038* *(850) 942-8899*
*227 North Bronough Street*
*Tallahassee, FL 32301* *FAX (850) 942-8345*

*Writer's Direct Line (850) 942-8347*

February 29, 2000

**VIA FACSIMILE**

Louis L. Long, Jr., Esq.
Louis L. Long, P.A.
322 Beard Street
Tallahassee, Florida 32303

Re: Cash Cow Services of Florida, L.L.C., Chapter 11 Case No. 99-70076-TLH4 Cash Cows F-1, L.L.C. through F-15, Chapter 11 Case Nos. 99-79996-TLH4 through 99-79982-TLH4

Dear Lou:

Each of the above referenced Debtors for whom you are attorney of record has made payments to the United States Trustee for quarterly fees for the third and fourth quarters of 1999. However, our review of the monthly operating reports for September through December, 1999 indicates each Debtor has substantially underpaid quarterly fees. The attached Cash Cow Quarterly Fee Summary prepared by Mary Buchholz sets out each Debtor's total disbursements for the quarters in question and indicates a collective total underpayment for the third quarter of 1999 in the amount of $8,500 and a collective

total underpayment for the fourth quarter of 1999 in the amount of $48,750.

In addition, you should be aware that further recalculation of each Debtor's quarterly fees may be necessary in light of the fact that Cash Cow Services of Mississippi, L.L.C. a nondebtor third party has, and continues, to pay the fees and expenses of Debtors' Professionals. Pursuant to the holdings in *St. Angelo v. Victoria Farms, Inc.*, 38 F.3d 1525 (9th Cir.1994 and *In re Hays Builders Inc.* 144 B.R. 778 (Bankr.W.D. Tenn. 1992) all disbursements whether paid directly by a debtor or indirectly through a third party, should be included in the calculation of United States Trustee quarterly fees. So that we may determine whether an additional adjustment is necessary, within ten days of the date of this letter, please provide us with an itemization by recipient's name of all professional fees and expenses paid by any third party(s) for the benefit of the above referenced Debtors from the date of filing through December 31, 1999.

Please address these matters with your clients, and give me a call so we may discuss any questions or concerns you may have. Thank you.

Sincerely,

C. David Butler
UNITED STATES TRUSTEE
REGION 21

/s/ Jim
Jim L. Bennett
Attorney-Advisor

cc: Charles F. Edwards
Assistant United States Trustee

App. 43

## Cash Cow Quarterly Fee Summary for 3rd Quarter

Source: Debtors' Monthly Operating Reports submitted for the period 9-13-99 thru 9-30-99

| Case # | Name | 7/99 | 8/99 | 9/99 | Total Disbursements | Total Quarterly Fees Due |
|---|---|---|---|---|---|---|
| 99-79997 | Cash Cow Services of Florida | | | | | |
| | Disbursements per Debtor | | | $0 | $0 | $250 |
| | Disbursements per UST | | | $217,925 | $217,925 | $1,250 |
| 99-79996 | Cash Cow F-1 Tallahassee | | | | | |
| | Disbursements per Debtor | | | $10,072 | $10,072 | $250 |
| | Disbursements per UST | | | $98,085 | $98,085 | $750 |
| 99-79995 | Cash Cow F-2 Tallahassee | | | | | |
| | Disbursements per Debtor | | | $13,469 | $13,469 | $250 |
| | Disbursements per UST | | | $179,409 | $179,409 | $1,250 |
| 99-79994 | Cash Cow F-3 Quincy | | | | | |
| | Disbursements per Debtor | | | $12,698 | $12,698 | $250 |
| | Disbursements per UST | | | $156,965 | $156,965 | $1,250 |
| 99-79993 | Cash Cow F-4 Perry | | | | | |
| | Disbursements per Debtor | | | $9,374 | $9,374 | $250 |
| | Disbursements per UST | | | $68,907 | $68,907 | $500 |
| 99-79992 | Cash Cow F-5 Tallahassee | | | | | |
| | Disbursements per Debtor | | | $10,770 | $10,770 | $250 |
| | Disbursements per UST | | | $149,574 | $149,574 | $750 |
| 99-79991 | Cash Cow F-6 Marianna | | | | | |
| | Disbursements per Debtor | | | $9,084 | $9,084 | $250 |
| | Disbursements per UST | | | $137,834 | $137,834 | $750 |
| 99-79990 | Cash Cow F-7 Monticello | | | | | |
| | Disbursements per Debtor | | | $6,714 | $6,714 | $250 |
| | Disbursements per UST | | | $51,293 | $51,293 | $500 |
| 99-79989 | Cash Cow F-8 Ocala | | | | | |
| | Disbursements per Debtor | | | $13,544 | $13,544 | $250 |
| | Disbursements per UST | | | $250,528 | $250,528 | $1,500 |

App. 44

## Cash Cow Quarterly Fee Summary for 4th Quarter

Source: Debtors' Monthly Operating Reports submitted for the period 10-01-99 thru 12-31-99

| Case # | Name | 10/99 | 11/99 | 12/99 | Total Disbursements | Total Quarterly Fees Due |
|---|---|---|---|---|---|---|
| 99-79997 | Cash Cow Services of Florida | | | | | |
| | Disbursements per Debtor | $0 | $0 | $0 | $0 | $250 |
| | Disbursements per UST | $391,638 | $411,547 | $401,971 | $1,205,156 | $5,000 |
| 99-79996 | Cash Cow F-1 Tallahassee | | | | | |
| | Disbursements per Debtor | $15,024 | $14,152 | $18,183 | $47,359 | $500 |
| | Disbursements per UST | $173,451 | $159,344 | $188,952 | $521,747 | $3,750 |
| 99-79995 | Cash Cow F-2 Tallahassee | | | | | |
| | Disbursements per Debtor | $18,960 | $19,572 | $22,311 | $60,843 | $500 |
| | Disbursements per UST | $380,663 | $366,882 | $439,227 | $1,186,772 | $5,000 |
| 99-79994 | Cash Cow F-3 Quincy | | | | | |
| | Disbursements per Debtor | $14,846 | $15,471 | $21,421 | $51,738 | $500 |
| | Disbursements per UST | $273,072 | $320,551 | $390,376 | $983,999 | $3,750 |
| 99-79993 | Cash Cow F-4 Perry | | | | | |
| | Disbursements per Debtor | $10,881 | $12,557 | $14,970 | $38,408 | $500 |
| | Disbursements per UST | $118,185 | $126,633 | $150,935 | $395,753 | $3,750 |
| 99-79992 | Cash Cow F-5 Tallahassee | | | | | |
| | Disbursements per Debtor | $17,373 | $15,782 | $20,691 | $53,846 | $500 |
| | Disbursements per UST | $261,522 | $235,128 | $256,513 | $753,163 | $3,750 |
| 99-79991 | Cash Cow F-6 Marianna | | | | | |
| | Disbursements per Debtor | $13,171 | $14,302 | $18,133 | $45,606 | $500 |
| | Disbursements per UST | $239,497 | $220,060 | $313,261 | $772,818 | $3,750 |
| 99-79990 | Cash Cow F-7 Monticello | | | | | |
| | Disbursements per Debtor | $10,685 | $11,344 | $14,364 | $36,393 | $500 |
| | Disbursements per UST | $95,622 | $99,941 | $84,957 | $280,520 | $1,500 |
| 99-79989 | Cash Cow F-8 Ocala | | | | | |
| | Disbursements per Debtor | $34,504 | $34,381 | $53,128 | $122,013 | $750 |
| | Disbursements per UST | $464,303 | $417,270 | $484,295 | $1,365,868 | $5,000 |

## Cash Cow Quarterly Fee Summary for 4th Quarter

Source: Debtors' Monthly Operating Reports submitted for the period 10-01-99 thru 12-31-99

| Case # | Name | 10/99 | 11/99 | 12/99 | Total Disbursements | Total Quarterly Fees Due |
|---|---|---|---|---|---|---|
| 99-79988 | Cash Cow F-9 Daytona | | | | | |
| | Disbursements per Debtor | $15,912 | $18,359 | $22,228 | $56,499 | $500 |
| | Disbursements per UST | $219,574 | $220,277 | $239,904 | $679,755 | $3,750 |
| 79987 | Cash Cow F-10 Fort Walton Beach | | | | | |
| | Disbursements per Debtor | $13,587 | $13,159 | $18,827 | $45,573 | $500 |
| | Disbursements per UST | $181,791 | $174,148 | $211,286 | $567,225 | $3,750 |
| 99-79986 | Cash Cow F-11 Fort Walton | | | | | |
| | Disbursements per Debtor | $11,801 | $13,228 | $17,813 | $42,842 | $500 |
| | Disbursements per UST | $153,886 | $166,942 | $179,750 | $500,578 | $3,750 |
| 99-79985 | Cash Cow F-12 Fort Walton | | | | | |
| | Disbursements per Debtor | $10,648 | $11,496 | $16,266 | $38,410 | $500 |
| | Disbursements per UST | $130,024 | **$130,000** | $158,413 | $418,437 | **$3,750** |
| 99-79984 | Cash Cow F-13 Valparaiso | | | | | |
| | Disbursements per Debtor | $6,658 | $8,042 | $11,037 | $25,737 | $500 |
| | Disbursements per UST | $54,142 | $59,415 | $62,412 | $175,969 | $1,250 |
| 99-79983 | Cash Cow F-14 Niceville | | | | | |
| | Disbursements per Debtor | $7,894 | $8,421 | $12,288 | $28,603 | $500 |
| | Disbursements per UST | $75,432 | $76,625 | $82,632 | $234,689 | $1,500 |
| 99-79982 | Cash Cow F-15 Crestview | | | | | |
| | Disbursements per Debtor | $10,943 | $12,342 | $15,347 | $38,632 | $500 |
| | Disbursements per UST | $116,033 | $116,518 | $116,325 | $348,876 | $3,750 |

**** Figures in Bold are estimates**

| | |
|---|---|
| Total Quarterly Fees per Debtor | $8,000 |
| Total Quarterly Fees per UST | $56,750 |
| Difference | $48,750 |

## Cash Cow Quarterly Fee Summary for 3rd Quarter

Source: Debtors' Monthly Operating Reports submitted for the period 9-13-99 thru 9-30-99

| Case # | Name | 7/99 | 8/99 | 9/99 | Total Disbursements | Total Quarterly Fees Due |
|---|---|---|---|---|---|---|
| 99-79988 | Cash Cow F-9 Daytona | | | | | |
| | Disbursements per Debtor | | | $7,617 | $7,617 | $250 |
| | Disbursements per UST | | | $125,560 | $125,560 | $750 |
| 79987 | Cash Cow F-10 Fort Walton Beach | | | | | |
| | Disbursements per Debtor | | | $11,078 | $11,078 | $250 |
| | Disbursements per UST | | | $97,080 | $97,080 | $750 |
| 99-79986 | Cash Cow F-11 Fort Walton | | | | | |
| | Disbursements per Debtor | | | $19,344 | $19,344 | $500 |
| | Disbursements per UST | | | $86,397 | $86,397 | $750 |
| 99-79985 | Cash Cow F-12 Fort Walton | | | | | |
| | Disbursements per Debtor | | | $7,699 | $7,699 | $250 |
| | Disbursements per UST | | | $74,055 | $74,055 | $500 |
| 99-79984 | Cash Cow F-13 Valparaiso | | | | | |
| | Disbursements per Debtor | | | $5,206 | $5,206 | $250 |
| | Disbursements per UST | | | $29,374 | $29,374 | $500 |
| 99-79983 | Cash Cow F-14 Niceville | | | | | |
| | Disbursements per Debtor | | | $6,766 | $6,766 | $250 |
| | Disbursements per UST | | | $36,868 | $36,868 | $500 |
| 99-79982 | Cash Cow F-15 Crestview | | | | | |
| | Disbursements per Debtor | | | $9,023 | $9,023 | $250 |
| | Disbursements per UST | | | $61,054 | $61,054 | $500 |

| | |
|---|---|
| Total Quarterly Fees per Debtor | $4,250 |
| Total Quarterly Fees per UST | $12,750 |
| Difference | $8,500 |

**Exhibit 2**

LOUIS L. LONG, JR., P.A.
Attorney at Law
322 Beard Street
Tallahassee, Florida 32303
(850) 224-8584
Fax (850) 222-6527
email: *llong@nettally.com*

Louis L. Long, Jr.

Paralegals:
Johnna A. Phillips, CLA
Frances A. Odler, CLA

March 2, 2000

Jim Bennett, Esq.,
U.S. Trustee's Office
227 N. Bronough St., Suite 1038
City Centre Building
Tallahassee, FL 32301

Re: Cash Cow Services of Florida, L.L.C. et. al.; Case number 99-70076-TLH4 and case numbers 99-79982 through 99-79996

Dear Jim:

I am writing in response to your letter of February 29, 2000, regarding the amount of the quarterly fees due to the United States-Trustee. I am fairly certain that the difference between your calculation of the disbursements and the Debtors' calculation, as shown on your attached summaries, is that you have included the amount of the loans made by the Debtors.

Of course, the Debtors are in the lending business; therefore, it is the position of the Debtors that the funds loaned to customers does not constitute a disbursement.

As you are aware, there is no definition of "disbursement" in section 1930. My research on this particular issue has not turned up a case directly on point; however, all of the cases I have read make reference to "payments" or "expenditures" of the Debtor. It is clear to me that a loan is not a payment or expenditure of the debtor.

If you include the amount of loans to customers as disbursements, you are charging the Debtor a fee based on its volume of business. I do not believe that it was contemplated that the quarterly fees should be calculated on the total volume of loan business done by the Debtors in this case any more so than the sales volume of a retail business. By analogy, when a rental business rents something to a customer, you do not charge a fee based on the value of the rented items. Likewise, there is no fee based on the sales volume of a retail business. To charge these Debtors a fee based on their volume of business would discriminate unfairly against them as opposed to virtually all other Chapter 11 debtors.

We agree that the payment of attorney's fees by Cash Cow Services of Mississippi, L.L.C., constitutes a disbursement by the Debtors, and we will provide the information you have requested. However, it will probably take more than ten days to get that information. Clayton Swank does work for all of the Cash Cow entities, including nondebtors in Florida and those businesses in states other than Florida. He will have to segregate the portion of the fees attributable to the Debtors.

Please give me a call if you have any questions or need any additional information.

Sincerely,

/s/ Louis L. Long, Jr.
Louis L. Long, Jr.

cc: Jeff Swank
Clayton Swank

**UNITED STATES BANKRUPTCY COURT**
**NORTHERN DISTRICT OF FLORIDA**
**TALLAHASSEE DIVISION**

| In Re: | Chapter 11 |
|---|---|
| CASH COW SERVICE OF FLORIDA, L.L.C. | Case No. 99-79997-TLH4 |
| CASH COW F-1, L.L.C. | 99-79996-TLH4 |
| CASH COW F-2, L.L.C. | 99-79995-TLH4 |
| CASH COW F-3, L.L.C. | 99-79994-TLH4 |
| CASH COW F-4, L.L.C. | 99-79993-TLH4 |
| CASH COW F-5, L.L.C. | 99-79992-TLH4 |
| CASH COW F-6, L.L.C. | 99-79991-TLH4 |
| CASH COW F-7, L.L.C. | 99-79990-TLH4 |
| CASH COW F-8, L.L.C. | 99-79989-TLH4 |
| CASH COW F-9, L.L.C. | 99-79988-TLH4 |
| CASH COW F-10, L.L.C. | 99-79987-TLH4 |
| CASH COW F-11, L.L.C. | 99-79986-TLH4 |
| CASH COW F-12, L.L.C. | 99-79985-TLH4 |
| CASH COW F-13, L.L.C. | 99-79984-TLH4 |
| CASH COW F-14, L.L.C. | 99-79983-TLH4 |
| CASH COW F-15, L.L.C. | 99-79982-TLH4 |
| | JOINTLY ADMINISTERED |

_____/

**DEBTOR'S RESPONSE TO UNITED STATES TRUSTEE'S MOTION TO COMPEL FULL PAYMENT OF QUARTERLY FEES AND MEMORANDUM OF LAW**

(Filed May 8, 2000)

THE DEBTORS file this response and memorandum to the United States Trustee's Motion to Compel Full Payment of quarterly Fees, and state as follows:

## FACTS

1. The Debtors are in the consumer loan business (title loans) and the check cashing business. The title loans are typical loan transactions whereby the Debtors make interest bearing loans to customers secured by the customer's vehicle title. The check cashing aspect of the business involves the cashing of a customer's check for the payment of a fee to the Debtor. The Debtor agrees to hold the check for delayed presentment for two weeks at which time the check would be cashed or redeemed by the customer. All loans and check cashing transactions are made in the ordinary course of the Debtors' businesses. The Debtors are no longer in the check cashing business.

2. The Debtors have calculated the fees due to the United States Trustee, pursuant to 11 U.S.C. § 1930, based on the payment of all expenditures of the business during each calendar quarter, which does not include amount of the loans made by the Debtors or the dollar amount of the checks cashed by the Debtors. The United States Trustee contends that the amount of the loans to customers and the amount of the checks cashed by the Debtors in the course of their business are disbursements for the purpose of calculating the fees due to the United States Trustee. In other words, contrary to any business of any other nature, the United States Trustee seeks fees based on the gross business done by these Debtors, which is equivalent to the gross sales or rentals of most other businesses.

## ARGUMENT

3. The ordinary meaning of the term "disbursements" does not include loans to customers or check

cashing transactions. As pointed out by the United States Trustee in its motion, the term "disbursements" is not defined in the statute. Moreover, Congress has not offered any guidance as to the meaning of "disbursements." *In re Wernerstruck, Inc.*, 130 B.R. 86 (Bkrtcy. D.S.D. 1991).

4. While most courts have construed the ordinary and common meaning of "disbursement" broadly, the Debtors have not found even one case that construes "disbursements" to include loan advances made by the debtor or checks cashed by a debtor.

5. "Disbursements" has been uniformly defined by the courts as a "payment" of any "expenditure" of the debtor. In *In re Ozark Beverage Co., Inc.*, 105 B.R. 510 (Bkrtcy E.D. Mo. 1989) the court held that "disbursements" meant, " . . . all expenses of a debtor-in-possession in a given quarter." *Ozark*, at 512. In *Wernerstruck*, the court held that:

> The rule of *In re Ozark Beverage Co., Inc.*, was that a disbursement is any payment. Black's Law Dictionary says that a disbursement is a payment. Without more guidance from either Congress or the appellate courts, this Court cannot fashion a better rule.

*Wernerstruck*, at 89. Likewise, in *In re Pars Leasing, Inc.*, 217 B.R. 218 (Bkrtcy. W.D. Tex. 1997), the court defined "disbursements" as follows:

> "Disbursement" is defined as "to pay out, commonly from a fund. To make payment in settlement of a debt or account payable." *Black's Law Dictionary* (5th ed. 1979). Payment is defined as, "discharge of an obligation or debt. . . . " *Id.* at 1016. Also, "In a more restricted legal

> sense, payment is the performance of a duty, promise or obligation, or discharge of a debt or liability, by the delivery of money or other value by a debtor to a creditor where the money or other valuable thing is tendered and accepted as extinguishing debt or obligation in whole or part. . . . Also, "Payment is a delivery of money or its equivalent in either specific property or services by one person from whom it is due to another person to whom it is due." *Id.*

*Pars Leasing*, at 219. Numerous other courts have similarly construed the meaning of the term "disbursement." *See*, *St. Angelo v. Victoria Farms*, 38 F 3d 1525 (9th Cir. 1994); *In re Postconfirmation Fees*, 224 B.R. 793 (Bkrtcy E.D. Wash. 1998); *In re N. Hess' Sons, Inc.*, 218 B.R. 354 (Bkrtcy. D. Md. 1998); *In re Flatbush Associates*, 198 B.R. 75 (Bkrtcy. S.D.N.Y. 1996); *In re Hays Builders, Inc*, 144 B.R. 778 (Bkrtcy. W.D. Tenn. 1992). A loan is not a payment or an expenditure, nor does the making of a loan constitute a payment or a "disbursement" made by the Debtor. Likewise, the cashing of a check is not a "disbursement."

6. A synonym is defined as, "a word having the same or nearly the same meaning in one or more sense as another in the same language." *Webster's New World Dictionary*, (3rd College Ed. 1991). In *Roget's International Thesaurus*, (3d ed. 1962) the term "disbursement" is found only in section 841 titled "expenditure." It is not found under section 818 "Lending." A copy of sections 818 and 841 are attached hereto as Attachment "A" for the Court's convenience. Thus, "disbursement" means the same thing as, "expenditure, spending, disbursement; payment. . . . " On the other hand, words that have the same meaning as "loan" or "lend" include, "advance", "advancement", or "accommodation."

7. Loans made by the debtors are not payments under a plan, nor are they payments to creditors. The Debtor's loans are its assets in the form of receivables. Funds are advanced and paid back with interest. U. S. Trustee fees should not be taxed on the loans made by the Debtors or checks cashed by the Debtors any more so than the amount of rentals made by some debtor in the rental business.

7. [sic] In conclusion, neither *Webster's* nor *Blacks* defined a "loan" as a "disbursement." *Roget's* does not show the words "disbursement" and "loan" as having the same or nearly the same meaning. Further, there are no cases, either found by the Debtor or cited by the United States Trustee, that define a "loan" or a check cashing transaction as a "disbursement." The U.S. Trustee fees in this case should be calculated on the expenditure paid by the Debtor, and not on the gross amount of its loan and check cashing businesses.

WHEREFORE, the Debtors respectfully request that the Court deny the motion of the United States Trustee, and grant such other relief to the Debtor as the Court deems just and appropriate.

Dated this 8th day of May, 2000.

/s/ Louis L. Long
LOUIS L. LONG, JR.
Louis L. Long, P.A.
322 Beard Street
Tallahassee, FL 32303
(850) 224-8584
FL BAR I.D. #293131
ATTORNEYS FOR
THE DEBTORS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished via Hand Delivery to Jim Bennett, Esq., U.S. Trustee's Office, 227 N. Bronough St., Suite 1038, City Centre Building, Tallahassee, FL 32301; this 8th day of May, 2000.

/s/ Louis L. Long
Attorney

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ATTACHMENT "A"

818. LENDING

NOUNS 1. lending, loaning; advance, advancing, advancement; lend-lease.

2. loan, lend [coll. & dial], advance, accommodation; call loan, call money, time money; package loan; foreign loan, external loan.

3. lender, loaner; moneylender, moneymonger, money broker; banker 834.10; usurer, Shylock, loan shark [coll.]; pawnbroker, pawn [coll.], lumberer [slang]; my uncle [slang]; mortgagee, mortgage holder.

4. pawnshop, pawnbrokery, pawn [coll.], hock shop [slang], spout [slang], *mont de piété* [F.], my uncle's [slang], sign of the three balls.

VERBS 5. lend, loan, advance, accommodate with, come across or down with the needful [slang]; lend-lease, lease-lend.

ADJS. 6. loaned, lent.

ADVS. 7. on loan, on security; in advance.

## 841. EXPENDITURE

NOUNS 1. expenditure, spending, disbursement; payment 839; deficit spending.

2. spendings, outgoings, outgo, outlay, money going out.

3. expenses, expense, costs, charges, burden of expenditure; overhead, operating expense, general expenses, nut [slang]; direct costs, indirect costs; distributed costs, undistributed costs; prime cost; cost of living, cost-of-living index, cost-of-living allowance.

4. spender, expender, expenditor, disburser.

VERBS 5. spend, expend, disburse, pay out, put out, for *or* shell out [slang], lay out, outlay; pay 839.10; put one's hands in one's pockets, open the purse, loose *or* untie the purse strings; burn in one's pocket, burn a hole in one's pocket; go *or* run through.

6. afford, well afford, spare, spare the price, bear, stand, support, endure, undergo, meet the expense of.

**UNITED STATES COURT OF APPEALS**
**FOR THE ELEVENTH CIRCUIT**

**NO. 01-11805-A**

On Appeal from the United States District Court
Northern District of Florida

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C. DAVID BUTLER, UNITED STATES TRUSTEE,

Appellant,

v.

CASH COW SERVICES OF FLORIDA, L.L.C., et al.,

Appellees.

_____/

**PLAINTIFFS/APPELLEES PETITION FOR PANEL REHEARING**

CASH COW SERVICES OF FLORIDA L.L.C., et al., Plaintiffs-Appellees, hereby petition this Court for a rehearing en banc and as grounds therefore states as follows:

1. This proceeding involves a question of significant importance in that it is a case of first impression (Panel Opinion, page 3) which construes a federal statute ((28 U.S.C. § 1930(a)(6)), and the Court has misapprehended the "ordinary, common" meaning of the language of the statute, specifically the meaning of the word "disbursement".

2. As stated by the Supreme Court in *Perrin v. United States,* 444 U.S. 37, 42; 100 S.Ct. 311, 314; 62 L.Ed.

2d 199 (1979), "[a] fundamental of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning." *Perrin*, at 42. The term "disbursement" is not defined anywhere in the statute; therefore, it must be given its ordinary, common meaning. It is respectfully argued that the Court did not interpret the term "disbursement" according to its ordinary, common meaning.

3. In its decision, the Court cited to numerous cases which have considered the issue of the definition of "disbursement" within the context of Section 1930. None of those cases dealt with the specific issue presented in this case (whether or not a "loan" of funds is a "disbursement"). However, all of the cited cases that interpret Section 1930 do define a disbursement as a "payment" or "expenditure," which, it is submitted, is the ordinary, common meaning of "disbursement."

4. The Court states that, "[none] of the above cases prevents or limits applying the Trustee's fee calculation to only "payments" or capital flowing from the bankruptcy estate." (Panel Opinion, page 9). There is a limiting factor in the cases, however, which is that they all define a "disbursement" as a "payment" or "payment of an expenditure" which is the exact opposite of the making of a loan. In fact, this Court concluded that "[the] general consensus is that a "disbursement" is defined as either (a) the action or fact of disbursing, or (b) that which has been disbursed, money or funds paid out, or expenditure." (Panel Opinion, page 5). The word "disburse" is universally defined as "to pay out; expend." On the other hand, the terms and phrases "pay out", "payment", "expend" or "expenditure" are nowhere defined as a loan, nor is a loan defined as a payment. " . . . there is a *payment* only if money or other

valuable things are given and accepted in partial or full discharge of an obligation." Blacks Law Dictionary (7th ed. 1999). Conversely, the definition of a loan is "the act of lending, esp. to use for a short time." *Webster's New World Dictionary* (3rd College Ed. 1991). The word "lend" is defined as follows:

> 1 to let another use or have (a thing) temporarily and on condition that it, or the equivalent, be returned: opposed to BORROW 2 to let out (money) at interest 3 to give; impart [a fire *lends* cheer to a room] – *vi.* to make a loan or loans – . . . .

*Id.* A payment or disbursement of money does not contemplate repayment while a loan of money does so contemplate. The word "loan" is nowhere defined a "payment." It appears, therefore, that the general consensus, and thus the "ordinary, common meaning," is that a "loan", not being a payment or expenditure, is not a "disbursement."

5. While all of the sources cited by the Court that actually define "disbursement," define it as a payment or expenditure, only one, Webster's Third New International Dictionary of the English Language, Unabridged, gives an example of the use of the word in the context of "disbursement of a loan." The rules of statutory construction require that words be given their ordinary, common meaning by the court. If the ordinary, common meaning of a disbursement were to include a loan, it stands to reason that not one but all sources would give the definition adopted by the court. It appears in this case that the exception to the common definition has been adopted by the Court.

6. None of the cited sources, cases, dictionaries, or otherwise, defines "disbursement" as any "capital flowing from the bankruptcy estate." Nonetheless, that is essentially the effect of the Court's decision. If it were the intent of Congress to apply the fee calculation to all funds or capital flowing from the bankruptcy estate, it could easily have said so in the statute, but it did not.

7. In conclusion, the ordinary, common definition of a disbursement does not include a loan. If it did, one would expect that that definition would appear in at least most, if not all, of the dictionaries currently in use. Significantly, it does not. Therefore, it is respectfully submitted that the Court incorrectly arrived at a decision that adopts as ordinary and common what is actually a very limited exception to the common definition of "disbursement."

WHEREFORE, CASH COW SERVICES OF FLORIDA L.L.C., et al., Plaintiffs-Appellees, respectfully request that this Court grant a rehearing, and such other relief as the Court deems just and appropriate.

DATED this 23rd day of August, 2002.

/s/ Louis L. Long, Jr.
LOUIS L. LONG, JR.
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## CERTIFICATE OF COMPLIANCE

This Petition contains 936 words and is printed in Word Perfect 5.2, 12 point Courier, 10 characters per inch.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via United States Mail to: PAUL W. BRIDENHAGEN, Esquire, 901 "E" Street N.W., Ste. 780, Washington, D.C. 20530, this 23rd day of August, 2002.

/s/ Louis Long, Jr.
Attorney